

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, :
Plaintiff, : Case No. 1:02cr100(1)
vs. : JUDGE WALTER HERBERT RICE
JOHN DUNCAN, A.K.A. JOVANNI :
MANGOTTI, :
Defendant. :

DECISION AND ENTRY SUSTAINING DEFENDANT'S PRO SE MOTION
FOR EXTENSION OF TIME IN WHICH TO FILE A NOTICE OF APPEAL
(DOC. #137); DEFENDANT GRANTED UNTIL OCTOBER 2, 2006 IN
WHICH TO FILE NOTICE OF APPEAL; SIXTH CIRCUIT REQUESTED TO
APPOINT COUNSEL TO REPRESENT DEFENDANT ON APPEAL;
REQUEST OF THE CLERK OF COURTS

This prosecution is before the Court on Defendant's pro se motion,
requesting an extension of time in which to file a notice of appeal. See Doc. #137.
Rule 4(b)(4) of the Federal Rules of Appellate Procedure, which governs extending
a criminal defendant's time in which to file a notice of appeal, provides:

(4) Motion for Extension of Time. Upon a finding of excusable neglect or
good cause, the district court may--before or after the time has expired, with
or without motion and notice--extend the time to file a notice of appeal for a
period not to exceed 30 days from the expiration of the time otherwise
prescribed by this Rule 4(b).

Herein, this Court finds the existence of good cause, given that the Defendant's request for the appointment of appellate counsel has not been ruled upon. See Doc. #136. Therefore, the Court sustains the Defendant's Motion for Extension of Time in which to File Notice of Appeal (Doc. #137).

The Defendant has not specified the amount of time he needs in which to file a notice of appeal. Rule 4(b)(4) authorizes this Court to extend that period up to 30 days beyond the date upon which he is required to file his notice of appeal. Rule 4(b)(1)(A) provides that a criminal defendant has 10 days after the entry of the judgment being appealed in which to file a notice of appeal. That 10-day period is computed in accordance with Rule 26 of the Federal Rules of Appellate Procedure, under which the first day of a period is not counted, while the last day is (unless it is a Saturday, Sunday or legal holiday), and intervening Saturdays, Sundays and legal holidays are not counted when the period is less than 11 days. Herein, the judgment from which an appeal by Defendant would be taken was entered on August 23, 2006. See Doc. #138. Computing the time in which Defendant has to file his notice of appeal in accordance with Rule 26, the Court concludes that said document must be filed no later than September 7, 2006. Although this Court could extend the Defendant's time to file a Notice of Appeal until Tuesday, October 10, 2006 (October 9th being Columbus Day, a legal holiday), the Court will only extend it until Monday, October 2, 2006, a sufficient period for appointed counsel to file a notice of appeal on his behalf and to represent him on appeal.

As is mentioned, the Defendant has requested that counsel be appointed to represent him on appeal. See Doc. #136. This Court hereby requests that the

Sixth Circuit appoint counsel to represent the Defendant. In order to expedite that process, the Court requests the Clerk of Courts to forward to the Sixth Circuit copies of this Entry and the Plaintiff's Motion for Appointment of Counsel (Doc. #136).

September 7, 2006

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.